

(R75-19)
75-19

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

February 7, 1975

The Honorable Daniel Peaches
Arizona State Representative
House Wing, State Capitol
Phoenix, Arizona 85007

Dear Representative Peaches:

In response to your letter of January 27, 1975, the redistricting of the Third Legislative District was done by the Legislature with the approval of the United States District Court.

Enclosed is a copy of the Judgment, Memorandum Opinion, Findings of Fact, Conclusions of Law and Decree of the federal court. In addition, I have also enclosed two maps showing both the Court's plan and the legislative plan indicating populations.

If I can be of any further help, please feel free to contact me.

Sincerely,

BRUCE E. BABBITT
Attorney General

MICHAEL M. SOPHY
Special Assistant Attorney General

MMS:lf

Enclosures

February 7, 1975

Mr. David A. Williams
Superintendent of Schools
Flagstaff Public Schools
701 North Kendrick Street
Flagstaff, Arizona 86001

Dear Mr. Williams:

On January 31, 1975, this office concurred in the opinion of the Coconino County Attorney issued to you on December 27, 1974. Although our concurring opinion did not discuss the case referred to in your letter of January 23, 1975, we have analyzed that case and find that it was distinguishable from the situation existing in Arizona.

The situation presented to the Coconino County Attorney involved an inquiry requesting what effect the conflict of interest statutes of A.R.S. §§ 38-501, et seq., would have upon a school board member's involvement in contract negotiations where he has a relative of the first degree employed by the school.

Mr. Flournoy correctly noted that such a board member would have to refrain from voting or otherwise participating in such contract negotiations as, pursuant to A.R.S. § 38-503, subparagraph A, it is specifically provided:

' Any public officer . . . whose relative has a substantial interest in any contract . . . shall make known that interest in the official records . . . and shall refrain from voting upon or otherwise participating in any manner as an officer or employee of such contract. . . ."

The California Appeals Court decision of Coulter v. Board of Education of the Temple City Unified School District, 114 Cal.Rptr. 271 (1974), involved a school teacher suing her local board of education for refusing to issue warrants for salary earned while teaching in

Mr. David A. Williams
February 7, 1975
Page Two

the school district. The defendant board of education responded by stating that plaintiff was in violation of Sec. 1174, 1174.5 and 1177 of the Education Code of California. These particular statutes provide in relevant part:

" Except as provided in subsection 1175, no contract or other transaction entered into by the governing board of any school district is either void or voidable under the provisions of section 1174 if the circumstances in the following subdivisions exist: (a) the fact of such interest is disclosed or noted to the governing board and noted in the minutes and the governing board thereafter authorizes, approves or ratifies the contract or transaction in good faith by votes sufficient for the purpose without counting the vote or votes of such interested member or members; and (b) the contract or transaction is just and reasonable as to the school district at the time it is authorized or approved. "

The Court held that defendant board was liable for plaintiff's past salary due and owing and found that plaintiff had not violated the statute despite plaintiff's husband being a member of the board of education for her school district in that plaintiff's husband disclosed to the other members of the board his interest in the contract negotiations and such was noted in the minutes prior to the vote on the contract involving plaintiff; and the board adopted the minutes in good faith by submission vote without counting plaintiff's husband's vote; and the board's action was just and reasonable with the result that the plaintiff had acted in accord with the California conflict statute.

The California case and the situation before us are completely distinguishable, as they involve different state statutes. The California statute specifically provides under what circumstances a board member may continue to act where he has a relative who will be affected by his actions. The California Appeals Court has ruled that where the statute is complied with there is no conflict of interest.

Mr. David A. Williams
February 7, 1975
Page Three

On the other hand, in Arizona we have a statute which specifically mandates that a public officer abstain from voting or participating in any contract, etc., where such officer has a relative with a substantial interest, in addition to requiring that the officer make such interest known in the official records.

I hope this clarifies the situation for you.

Sincerely,

BRUCE E. BABBITT
Attorney General

MICHAEL M. SOPHY
Special Assistant Attorney General

MMS:lf

cc: The Honorable J. Michael Flournoy